## **FILED**

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UNITED STATES DISTRICT COURT 1 FOR THE EASTERN DISTRICT OF NORTH CAROLINA 2 WESTERN DIVISION 3 4 **GUSTAVO ROMANELLO** 5 ACELA ROMANELLO 6 Vs. Case No.: 5:12 CV 371-FL 7 BANKUNITED, INC., TRUSTEE SVCES. PLAINTIFF'S RESPONSE TO 8 OF CAROLINA, LLC., BROCK & SCOTT. **DEFENDANT'S BANKUNITED,INC'S** ) PLLC., RAGSDALE LIGGETT, PLLC., ) **RESPONSE IN OPPOSITION TO** 9 ASHLEY H. CAMPBELL PLAINTIFF'S MOTION TO AMEND ) 10 11 Plaintiffs Gustavo and Acela Romanello ("Plaintiffs") hereby submit this Response to 12 Defendant BankUnited, Inc.'s ("BankUnited") Response in Opposition to Plaintiffs Motion 13 14 for Leave to Amend. 15 STATEMENT OF THE CASE 16 17 Plaintiffs filed a civil action complaint (the "complaint") in the United States District 18 Court, Eastern District of North Carolina on or about July 30, 2012. Responding to that 19 complaint on September 4, 2012, BankUnited filed a Motion to Dismiss. On October 9, 20 2012, Plaintiffs filed a Response to BankUnited's Motion to Dismiss, attaching documents as 21 Exhibits (the "Exhibits"). 22 23 In the Response, Plaintiffs also moved to leave to file an amended complaint in order to 24 correct any deficiencies, filed on October 22, 2012. 25 On November 5, 2012, BankUnited filed a Response in Opposition to Plaintiff's Motion for 26 Leave to Amend. 27 28

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Rule 15 of the Federal Rules of Civil Procedure allows a party to amend its pleading,
"...and leave shall be freely given when justice so requires", with the standard followed by

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of

amendment, etc.—the leave sought should, as the rules require, be "freely given."

Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed.2d 222 (1962)

the federal courts that was set by the Supreme Court in Foman v. Davis:

## **ARGUMENT**

I. BankUnited states that allowing Plaintiff's Motion for Leave to Amend would be futile.

Plaintiffs consider that subject to debate, because they have a justifying reason to amend the

Complaint to correct deficiencies in their pleadings, there is nothing futile about that.

BankUnited criticized Plaintiffs for not including any exhibits in their initial complaint, even

though, Plaintiffs were proceeding according to Rule 8 (a)(2) that requires a "short and plain

statement of the claim showing that the pleader is entitled to relief".

Now they're criticizing Plaintiffs for presenting to the Court documents as Exhibits.

II. Plaintiffs need to include two more BankUnited violations in their pleadings.

In Exhibit C, Defendant BankUnited's letter didn't include "a statement that unless

consumer, within thirty (30) days after the receipt of the notice, disputes the validity of the

debt, or any portion thereof, the debt will be assumed to be valid by the debt collector."

1	As unsophisticated consumers that Plaintiffs are, by not reading the previous statement, they
2	didn't answer in 30 days to BankUnited's letter, and by not including that statement in the
3	letter, BankUnited violated Plaintiffs rights and the F.D.C.P.A. law 15 USC 1692 g (a)(3).
4	Defendants Trustee Services of Carolina DID INCLUDE in their letter the "Right to dispute
5	in thirty (30) days" provision in 15 USC 1692 g(a)(3), that's why Plaintiffs sent to Trustee
6 7	Services of Carolina and to BankUnited the letter titled "Qualified Written Request-Notice
8	
	of Dispute-Validation of debt", within the 30 days stipulated.
9	BankUnited also violated another FDCPA law, this time, 15 USC 1692 g (a)(5), by not
10 11	stating in the letter the following: "upon consumer's written request within the 30 day
12	period, the debt collector will provide the consumer with the name and address of the
13	original creditor, if different from the current creditor."
14	Plaintiffs found out months later, that the original creditor went bankrupt.
15	Consequently, Plaintiffs find no basis to conclude that an opportunity to amend would be
16	something futile, and respectfully request to this Honorable Court that the Motion for Leave
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18	to Amend Complaint be granted and that the Order be entered.
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20	This is the 13 <sup>th</sup> day of November, 2012
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22	Gustavo Romanello Acela Romanello  Juston Elomonello
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24	5445 Thunderidge dr.
25	Raleigh, NC 27610

Tangogaucho@gmail.com

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1	Plaintiffs certify that on November 13, 2012, a copy of the foregoing was served via Fit Class Mail addressed to:
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4	Sean T. Partrick YATES McLAMB & WEYHER, LLP 421 Fayetteville St., ste. 1200 Raleigh, NC 27601
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7	Counsel for BankUnited, Inc.
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9	
10	Travis E. Menk BROCK & SCOTT, PLLC 5121 Parkway Plaza Blvd., ste.300 Charlotte, NC 28217  Counsel for Brock & Scott, Pllc and Trustee Services of Carolina, Llc
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17	J. Whitfield Gibson Robert S. Shields, jr MANNING FULTON & SKINNER, P.A. 3605 Glenwood Ave., ste. 500 Raleigh, NC 27612  Counsels for Ragsdale Liggett, Pllc and Ashley H. Campbell  This November 13, 2012
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24	Gustavo Romanello Acela Romanello 5445 Thunderidge dr.  Balvick NG 27610
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26	Raleigh, NC 27610 Tangogaucho@gmail.com
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